

§ 95-229.10. Precautionary safety arrangements.

(a) Installation or performance of precautionary safety arrangements shall be performed by the owner or operator of high-voltage lines only after mutually satisfactory arrangements have been negotiated between the owner or the operator of the lines, or both, and the person responsible for the work to be done. The negotiations shall proceed promptly and in good faith with the goal of accommodating the requested work consistent with the owner's or operator's service needs and the intent to protect the public from the danger of contact with high-voltage lines as far as is reasonable and cost-effective. The person responsible for the work may perform the work only after satisfactory mutual arrangements, including coordination of work and construction schedules, have been made between the owner or operator of the high-voltage lines and the person responsible for the work. The owners or operators of high-voltage lines shall make the final determination as to which arrangements are most feasible and appropriate under the circumstances; provided, however, that the utility may determine that no arrangements can be made that would allow the proposed work to be carried out in a reasonably safe manner or at reasonable cost taking into account the cost to its customers, and the owner or operator of high-voltage lines may refuse to enter into an agreement on that basis.

(b) The precautionary safety measures shall be appropriate, reasonable, and cost-effective for the work of which the owner or operator of high-voltage lines has received notification. During mutual negotiations, the person responsible for the work may change the notification of intended work to include different or limited work so as to reduce the precautionary safety measures required to accommodate such work. The precautionary safety measures shall not violate the requirements of the current edition of the National Electrical Safety Code.

(c) The owner or operator of the high-voltage lines is not required to provide the precautionary safety arrangements until an agreement for payment has been made; except that, if the amount of payment is in dispute, the owner or operator shall commence with providing precautionary safety measures as if agreement had then been reached and the undisputed amount shall be paid according to the agreement reached as to that amount. If agreement for payment of the disputed amount has not been reached within 14 days from completion of precautionary safety measures, the owner or operator and the person or business entity responsible for doing the work may resolve the dispute by arbitration or other legal means.

(d) Unless otherwise agreed, the owner or operator of the high-voltage lines shall initiate the precautionary safety arrangements agreed upon within five working days after the agreement for payment has been reached as required in subsection (c) of this section, but no earlier than the agreed construction date coordinated between the parties. Once initiated, the owner or operator shall complete the work promptly and without interruption, consistent with the owner's or operator's service needs. Should the owner or operator of the high-voltage lines fail to provide the precautionary safety measures agreed upon in a timely manner, the owner or operator of the high-voltage lines shall be liable for costs or loss of production of the person or business entity requesting assistance to work in close proximity to high-voltage lines, except that no such liability shall exist during times of emergency, such as storm repair and the like.

(e) Precautionary safety arrangements may include:

- (1) Placement of temporary mechanical barriers separating and preventing contact between material, equipment, other objects, or persons and high-voltage lines;
- (2) Temporary de-energization and grounding;
- (3) Temporary relocation or raising of the high-voltage lines; or
- (4) Other such measures found to be appropriate in the judgment of the owner or operator of the high-voltage lines.

(f) The actual expense incurred by any owner or operator of high-voltage lines in taking precautionary measures as set out in subsections (a) through (e) of this section, including the wages of its workers involved in making safety arrangements, shall be paid by the person responsible for the work to be done, except if:

- (1) Any owner or operator of an overhead high-voltage line has located its facilities within a public highway or street right-of-way and the work is performed by or for the Department of Transportation or a city, county, or town, the actual expenses shall be the responsibility of the owner or operator of the overhead high-voltage lines, unless the owner or operator can provide evidence of prior rights or there is a prior written agreement specifying cost responsibility. However, if it is determined by the Department of Transportation or a city, county, or town that the temporary safety arrangements are for the sole convenience of its contractor, the actual expense shall be the responsibility of the contractor;
- (2) The owner or operator of the high-voltage lines has not installed the line in conformance with an applicable edition of the National Electrical Safety Code. In that case, the liability of the person responsible for the work shall be limited to the amount required to accommodate the work over and above the amount required to bring the installation into compliance with the National Electrical Safety Code; or
- (3) In the case of property used for residential purposes, such actual expenses shall be limited to those in excess of one thousand dollars (\$1,000). (1995 (Reg. Sess., 1996), c. 587, s. 1.)